

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**RICHARD LOWERY,**

**Plaintiff(s),**

**CASE NUMBER: 06-13488  
HONORABLE VICTORIA A. ROBERTS**

**v.**

**RAY MCCLARTY and RICHARD  
FITZMAURICE,**

**Defendant(s).**

**ORDER**

This matter is before the Court on Plaintiff Richard Lowery's Motion for Relief from the Final Judgment and Order Adopting Magistrate's Report and Recommendation that Gives Judgment in Favor of Defendants. Plaintiff, a *pro se* inmate, asks the Court to reinstate his Complaint and permit him to amend it to add additional claims.

Plaintiff filed suit against Defendants Ray McClarty and Richard Fitzmaurice, who are corrections officers at the Huron Valley Correctional Facility ("HVC") where Plaintiff was incarcerated for a period of time. Plaintiff alleged that Defendants violated 42 U.S.C. §1983 by filing false misconduct charges against him in retaliation for his exercise of his First Amendment rights via complaints to administrators and government officials about the conditions of the HVC and alleged mistreatment by HVC guards.

Defendants filed a Motion to Dismiss Plaintiff's complaint. The Court referred Defendants' motion to Magistrate Judge Donald A. Scheer for a Report and Recommendation ("R&R"), pursuant to 28 U.S.C. §636(b)(1)(B). On April 25, 2007,

Magistrate Scheer issued an R&R recommending that the Court grant Defendants' motion. Because neither party filed objections to the R&R within the time allowed under 28 U.S.C. §636(b)(1), on July 5, 2007 the Court adopted the R&R and entered a Judgment in Defendants' favor and against Plaintiff.

Pursuant to FRCP 60(b)(1) and (6), Plaintiff asks the Court to vacate its Order and Judgment because he says that he did not receive the R&R despite his repeated inquiries to the Clerk of the Court about the status of the pending motion. Also, before the Court dismissed his Complaint, Plaintiff claims to have filed a motion to amend his complaint to add an equal protection claim and additional argument on the issue of exhaustion in light of the Supreme Court's decision in *Jones v Bock*, 127 S.Ct. 910 (2007).

Plaintiff's motion is **GRANTED IN PART**. A court may grant a motion for relief from judgment under FRCP 60(b)(1) to correct clerical errors. *In re Walter*, 282 F.3d 434, 440 (6<sup>th</sup> Cir. 2002). The Court accepts Plaintiff's representation that he did not receive a copy of the Magistrate's R&R.

The Order Adopting the R&R and the Judgment in favor of Defendants entered on July 5, 2007 are hereby vacated. Plaintiff may file Objections to Magistrate Sheer's R&R within 15 days of entry of this Order. Failure to file Objections will constitute a waiver of the right to appeal the R&R. *United States v Walters*, 638 F.2d 947, 950 (6<sup>th</sup> Cir. 1981).

With respect to Plaintiff's request to Amend his Complaint, the Court is unable to locate a record of Plaintiff's filing. Therefore, Plaintiff must refile it with the Court.

**IT IS SO ORDERED.**

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: August 17, 2007

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se plaintiff by electronic means or U.S. Mail on August 17, 2007.

s/Carol A. Pinegar

Deputy Clerk